IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR

..

:: JUDGMENT ::

Santosh Kumar Saini Vs. Girdhari Lal Bhargava & Ors.

S.B. CIVIL MISC. APPEAL NO.113/1993.

Against the judgment and award dated 27.02.1993 made by the Motor Accidents Claims Tribunal, Churu in Claim Case No.107/1989.

Date of Judgment :: 18th October 2006

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. Jagdish Vyas, for the appellant.
Mr. J.K. Chanda }
Mr. Sunit Dutt Chanvaria for
Mr. K.K. Kalia }, for the respondents.

...

BY THE COURT:

This is claimant's appeal against the award dated 27.02.1993 made by the Motor Accidents Claims Tribunal, Churu in Claim Case No.107/1989 whereby the Tribunal held the accident in question to have occurred for the claimant's own negligence in driving his scooter and rejected the claim application.

The claimant Santosh Kumar stating his age at 36 years, profession as an Advocate and monthly income at Rs.1,500/- preferred the claim application on 04.11.1989 against the driver, owner and insurer of a three-wheeler tempo bearing registration No. RJI 3984 with the averments that on 06.08.1989 at about 4:00 p.m. he was proceeding on his Bajaj scooter from market towards railway station at Churu; that on the main road near State Bank of Bikaner & Jaipur he was crossing the offending vehicle RJI 3984 that was standing behind another three-wheeler; and that the non-applicant No.1 by driving the offending vehicle rashly and negligently hit against the rear left side of his scooter causing accident that resulted in fracture of bones above and below his right knee. The claimant stated that from 06.08.1989 to 24.09.1989 he remained under treatment lying on a cot with traction and further remained on bed rest from 25.09.1989 to 24.10.1989. The claimant-appellant claimed compensation in the sum of Rs.1,46,900/- stating various losses including expenditure on treatment.

The non-applicant Nos. 1 & 2, driver and owner of the three-wheeler RJI 3984 submitted a detailed reply to the claim application. While not disputing the particulars of claimant, they denied the averments regarding his monthly

income for want of knowledge and denied his having sustained fracture injuries or having incurred any permanent disability. The averments regarding the incident were denied with the submissions that the claimant being a lawyer has concocted the story and has filed the false case in order to recover amount from the insurance company. The said non-applicants proceeded to elaborate that at the relevant date and time, the vehicle in question RJI 3984 and another three-wheeler RJI 6028 were standing in front of State Bank of Bikaner & Jaipur at railway station road, Churu; that the claimant came from the city side going towards station driving an unnumbered scooter in a brisk speed negligently and without control; that the scooter was proceeding in the middle of the road and the claimant being not conversant with scooter driving suddenly applied the brakes and lost control on scooter, fell towards right hand side of the road and came under the scooter; that the non-applicant No.1 with Kurda Ram Mali, Jeetu Ram Bhat, Radheshyam Chotia and driver-owner of the three-wheeler RJI 6028 Bhani Prakash pulled the claimant out and showing compassion, took him home. It has been specifically maintained in the reply that both the three-wheelers aforesaid were standing still and were not in motion and the vehicle of the non-applicants did not even touch the scooter of the claimant. It has further been stated that the claimant came

under his scooter for his own negligence and foolishness and had admitted his mistake before everybody present at the site and for that reason he did not lodge any police case for one and half months; that now the claimant was carrying the greed of recovering compensation from the insurer and thus the claim case has been filed; that the witnesses (presumably with reference to the criminal case) were either the clients of the claimant or were his henchman and have falsely been named as witnesses; and that the Investigating Officer was also of the community of the claimant and, therefore, by way of false investigation, a false challan has been filed in order to extend undue benefit to the claimant. It has also been asserted that the claimant was not conversant with scooter driving; that the scooter in question was not of the ownership of the claimant on 06.08.1989 and had been registered at number RJ 10/0042 on 30.08.1989 in the office of the District Transport Officer, Churu; and that the scooter was not carrying any dent marks hence was never got mechanically examined. The details of expenditure as stated by the claimant have also been denied with the submissions that the claimant was personally responsible for the injuries that were sustained due to his own negligence and foolishness and it has also been asserted that the expenditure statement was not correct because the financial position of the claimant was

so weak that he was not capable of spending so much nor any such expenditure was necessary nor was incurred.

The insurer, non-applicant No.3 while generally denying the claim averments submitted that the accident did not occur for the mistake of the driver of the vehicle RJI 3984 and also asserted limits on its liability and adopting of the provisions of Section 147 of the Act; and that the insurer would be liable only if the vehicle was being driven by a valid licence holder in the control of the vehicle owner.

On the pleadings of the parties, the following issues were framed by the Tribunal:

> "1- क्या दिनांक 6-8-89 को वाहन संख्या आर0जे0आई0 3984 के चालक विपक्षी सं01 ने वाहन को तेज गति व असावधानी से गलत दिशा में चलाकर प्रार्थी के स्कूटर आर0जे0 10 / 0042 के टक्कर मारकर दुर्घटना कारित की जिसके कारण प्रार्थी के चोटें आई ?
>
> ----प्रार्थी
>
> 2- क्या दुर्घटना प्रार्थी स्वंय के द्वारा बजाज स्कूटर आर0जे010 / 0042 को तेज गति, प्रमाद, असावधानी व गलत दिशा में चलाने के कारण स्वत: ही गिरने से हुई और वाहन आटो तांगा आर 0जे0 आई0 3984 से कोई दुर्घटना नहीं हुई? यदि हां तो क्या प्रभाव है ?
>
> ----विपक्षीगण
>
> 3- क्या विपक्षी सं0 3 बीमा कम्पनी द्वारा प्रस्तुत वादोत्तर की विशेष आपतियों में उठाए गए आरोपों के आधार पर बीमा कम्पनी उत्तरदायी नहीं है ?
>
> ---विपक्षी सं0 3

4- क्या प्रार्थी क्षतिपूर्ति हेतु राशि विपक्षीगण से प्राप्त करने का अधिकारी है ? यदि हां तो कितनी और किस किस विपक्षी से ?

---प्रार्थी

5- अनुतोष ।"

In evidence, the claimant examined himself as AW-1 and produced treatment and prescription slips (Ex. 1 to Ex.4), his injury report dated 28.09.1989 (Ex. 5), his X-ray report dated 28.09.1989 (Ex.6), Charge-sheet dated 17.10.1989 (Ex.7), site plan (Ex.8), FIR (Ex.9), application for release of the vehicle made by the owner (Ex.10), the order passed by the court (Ex.11) and medical bills (Ex.12 to Ex.15). On the other hand the non-applicants examined the driver of the vehicle RJI 3984 Girdhari Lal as NAW-1/1 and another tempo driver Bhanu Prakash as NAW-1/2.

After hearing the parties, learned Judge of the Tribunal referred to some part of testimony of the three witnesses; then referred to the contentions of the parties and then concluded that the claimant has not been able to establish that the accident occurred for the negligence or omission of care on the part of the non-applicant No.1; and that, on the other hand, from the evidence of the non-applicants, it was clear that the accident occurred for negligent driving by the claimant himself. The learned Judge of course decided issue No.3 against the insurer for want of any

submission in that regard and in issue No.4 assessed the loss for the claimant at Rs.12,500/- comprising of Rs.2,500/- of treatment expenditure, Rs.5,000/- for the loss of income and another Rs.5,000/- for physical and mental agony; however, in view of the findings on issues Nos. 1 and 2, the claimant was held disentitled for any relief and the claim application was, accordingly, rejected.

Assailing the award aforesaid, learned counsel appearing for the appellant has strenuously contended that the factum of accident by the fall of the claimant from his scooter at the given time, date and place is not in dispute; and the suggestion made by the non-applicants of the claimant having suffered injury for his own fault is falsified from the statements of their own witnesses; and the Tribunal has been in error in not appreciating the evidence in its proper perspective. Learned counsel submitted that merely because FIR was lodged belatedly or that the claimant had a new scooter with him, he cannot be deprived of just compensation for the loss suffered due to the accident caused by the vehicle of the non-applicants.

Learned counsel for the respondents have duly supported the impugned award with the submissions that the claimant has failed to establish his holding a valid driving licence and has also failed to establish that the accident was

caused by the three-wheeler in question; and the facts that the FIR was lodged with an inordinate delay of over one and half months and then the scooter was not got mechanically examined are all material lacunae in the case set up by the claimant and the Tribunal has not erred in rejecting the baseless claim application.

Having given a thoughtful consideration to the rival submissions and having scanned through the entire record, this Court is satisfied that the impugned award particularly on its findings on issues Nos. 1 and 2 cannot be sustained and the Tribunal has been in error in rejecting the claim application.

While referring to the evidence in paragraph 9 of the impugned award, the learned Judge has cursorily referred only to a part of testimony of the witnesses and has left aside the part that stands squarely contrary and contradictory to the case set up by the non-applicants in their reply; and has also ignored the contradictions in the testimony of two witnesses produced by the non-applicants. The learned Judge while referring to the statements of NAW-1/1 Girdhari Lal and NAW-1/2 Bhanu Prakash has observed thus:

> "इसके विपरीत एन0ए0डब्लू 1/1 गिरधारीलाल का कथन है कि वह उस दिन टेम्पों नम्बर 6028 के पीछे अपना टेम्पों आर0जे0आई0 3984 लिये खड़ा था कि पीछे से वकील संतोषकुमार जी स्कूटर पर हकेबके होते हुए आये। उनके स्कूटर की उसके टेम्पों

से टक्कर नहीं हुई थी बल्कि वे स्वत: ही अपनी लापरवाही से गिर पड़े थे जिससे उसने अन्य लोगों की सहायता से उनको घर पहुंचाया था। उसका कथन है कि उसकी लापरवाही अथवा गलती के कारण कोई दुर्घटना नहीं हुई थी तथा न उसके स्कूटर के ही किसी प्रकार की कोई खरोंच आई थी। एन0ए0डब्लू0 1/2 भानुप्रकाश जो आगे के टेम्पों का चालक था का कथन है कि स्वंय प्रार्थी गलत दिशा में आकर गिरधारी के टेम्पों के टक्कर मारी थी जिसके कारण उन्हें अस्पताल ले जाया गया था । उसका कथन है कि दुर्घटना स्वंय प्रार्थी की गलती के कारण हुई और उसने ही गलत दिशा से आकर टक्कर मारी थी।"

The entire of the findings forming the basis of deciding issue Nos. 1 and 2 against the claimant reads thus:-

"दुर्घटना मुआवजा याचिका में प्रार्थी को प्रथम दृष्टया रूप से यह साबित करना आवश्यक है कि दुर्घटना अप्रार्थी ड्राईवर की लापरवाही गफलत व तेजी से वाहन चलाने के कारण हुई है। प्रार्थी यह स्वीकार करता है है कि दुर्घटना के समय उनके स्कूटर पर न तो नम्बर लगा हुआ था और न उन्होंने स्वयं का चालक अनुज्ञा पत्र ही प्रस्तुत किया जिससे अप्रार्थीगण के इस आक्षेप की पुष्टि होती है कि वास्तव में प्रार्थी के पास उस समय स्कूटर चलाने का कोई अनुज्ञापत्र नहीं था और उन्हें पूरी तरह से स्कूटर चलाने का अनुभव नहीं था। पक्षकारान द्वारा प्रस्तुत साक्ष्य का आधोपान्त विवेचन करने से प्रार्थी दुर्घटना अप्रार्थी सं0 1 की लापरवाही व गफलत से घटित होना साबित नहीं कर पाया है। इसके विपरीत अप्रार्थीगण की साक्ष्य से यह स्पष्ट होता है कि वास्तव में दुर्घटना स्वंय प्रार्थी द्वारा वाहन को लापरवाही से चलाने के कारण ही घटित हुई थी। अत: विवाद्यक सं0 1 व 2 उक्त प्रकार से विरूद्ध प्रार्थी बहक अप्रार्थीगण विनिश्चित किये जाते हैं।"

The learned Judge has mentioned to have reached to the conclusion about negligence only on the part of the claimant after purported analysis of the entire evidence; however, the observations are not only laconic but are incorrect too.

It has already been noticed that the non-applicants specifically maintained in their reply that the three-wheeler in question was standing still, was not in motion and did not even touch the claimant's scooter that skidded for his own fault. The averments as taken by the non-applicants read as under:

> "अप्रार्थी सं0 2 का टेम्पू सं0 आर 0 जे0 आई 0 3984 तथा उससे आगे वाला स्कूटर टेम्पू सं0 आर 0 जे0 आई 06028 तो वहीं पर ही खड़े हुए ही थे बिलकुल चलाये ही नहीं गये थे इसलिये आर 0 जे0 आई 0 3984 स्कूटर द्वारा प्रार्थी के कथित स्कूटर को मोड़ कर तेज गति और लापरवाही से चलाकर टकर मारने का कोई सवाह ही पैदा नहीं हुआ यह आरोप बिलकुल झूठा एवं मनघड़न्त झूठी कहानी बनाने के लिये रचा गया है। प्रार्थी के कथित स्कूटर अप्रार्थी सं0 2 के स्कूटर को छुआ तक नहीं था न ही प्रार्थी के कथित स्कूटर के कोई रगड़क तक आयी थी और न ही अप्रार्थी सं0 2 के स्कूटर के रगड़क आयी थी। दरअसल कोई टक्कर हुई ही नहीं थी और न ही कोई दुर्घटना हुई थी। प्रार्थी स्वयं स्कूटर चलाने का जानकार नहीं होने के कारण उक्त स्कूटर को चला नहीं सका और अपनी ही लापरवाही और बेवकूफी से कथित अपने स्कूटर के नीचे दब गया था जिसके लिये प्रार्थी स्वयं जिम्मेवार है"

NAW-1/1, Girdhari Lal in his examination-in-chief has stated thus:

> "मैं स्टेट बैंक से तरफ से स्टेशन आ रहा था। मेरे आगे एक टैम्पू और था मैं उसके पीछे था। आगे वाले टैम्पू का नंबर 6028 था। मेरे का नंबर 3984 था। मेरे टैम्पू का मालिक राजकुमार था। मैं उसमें चालक था। अगला टैम्पू चला तो मैं भी चल पड़ा। पीछे से वकील सन्तोषकुमार जी स्कूटर पर आए। वह अक बके होते हुए आए । उनके स्कूटर के या उनके मेरी कोई टक्कर नहीं हुई वे गिर पड़े तो उन्होंने कहा था कि मेरे को घर ले चलों। तो मै अपने टैम्पू में उन्हें उनके घर ले गया। उनके स्कूटर के कोई नंबर नहीं था। मैं तो अपनी साइड में था मेरी गलती या लापरवाही से उनके कोई दुर्घटना नहीं हुई।"

The fact that the three-wheelers in question were not standing still but were in motion as coming out in somewhat clumsy terms in the statement of Girdhari Lal, NAW-1/1 is established in no uncertain terms in the statement of Bhanu Prakash, NAW-1/2, the driver of other three-wheeler bearing registration No.RJI 6028. The statement of Bhanu Prakash, NAW-1/2 reads thus:

> "बहल्फ कहा कि तीन सवा तीन साल पहले की बात है। मैं टैम्पू चला रहा था। लाल घण्टाघर चूरू की बात है। मेरे पीछे गिरधारी का टैम्पू था। उसके और मेरी गाडी के बीच चार पांच फीट का फासला था। सन्तोष कुमार वकील स्कूटर पर बाजार की तरफ जा रहे थे। <u>हम स्पीड से जा रहे थे और वकील साहब रोंन्ग साइड से आए और गिरधारीलाल के टक्कर को गयी।</u> एक्सीडेन्ट के

बाद वकील के लग गयी और वकील और अस्पताल ले गए। एक्सीडेट प्रार्थी की गलत से हुआ था उन्होंने रॉन्ग साइड से आकर टक्कर मारी थी।"

(underline supplied)

This witness Bhanu Prakash has stated in his cross-examination by the insurer that by 'speed' he meant 'moving slowly'; and in cross-examination by the claimant that by 'speed' he meant normal speed at which they drive the tempo and which is slower in market.

It is apparent on the face of the record that the reply assertions of the three-wheelers being motionless and the scooter of the claimant and the vehicle of the non-applicant having not even touched each other and the claimant having fallen down for his own mistake are not correct.

NAW-1/1 Girdhari Lal could dare not deny that his vehicle was in motion and NAW-1/2 Bhanu Prakash has specifically stated that both the three-wheelers were moving; and that there was a collision with Girdhari Lal's vehicle though according to him the claimant hit from the wrong side. The incongruity in the statements of these witnesses and contradiction with the reply averments makes it clear that the overt averments as taken in the reply denying the accident with Girdhari Lal's three-wheeler are not correct and the case set up by the non-applicants is effectively demolished by the testimony of their witness Bhanu Prakash, NAW-1/2. It is

apparent that the manner in which the claimant has been branded negligent and even foolish are not only rude but are incorrect too.

Once it is clear that the non-applicants are not correct in their assertion about the material facts concerning the incident; and then, the date, time and place of incident are not in dispute; and even falling down of the claimant from his scooter and sustaining injuries is also in dispute, in the overall evidence on record, preponderance of probabilities leans in favour of the claimant that the scooter he was riding at was hit by the offending vehicle resulting in accident.

It may also be pointed out that some part of negligence or omission of care on the part of the claimant could also have been considered had the non-applicants put forward a specific plea regarding contributory negligence and that being not so, there appears no reason to disbelieve the claimant that for the negligence of its driver the three-wheeler in question hit the rear left side of his scooter. In the fact situation of the present case, particularly in view of rejection of overt assertion of exclusive fault of the claimant as made by the non-applicants, even the allegation about want of driving licence with the claimant looses its relevance; and even if it be assumed that the claimant was not holding a valid driving licence, the non-applicant cannot be absolved of their liability

for causing harm to the claimant by negligent driving of their vehicle.

It is true that in this case, the FIR had been lodged with an inordinate delay only on 27.09.1989 but merely on that ground the claimant cannot be non-suited. The claimant has specifically pointed out that due to the fracture injury he remained immobile till 25.09.1989. The X-ray report of the claimant (Ex.5) dated 28.09.1989 reports about fracture of both condyles at the right knee of about 8 to 12 weeks old. The X-ray report categorically states thus:

> "There is an evidence of fracture both condyles i.e. medial and lateral condyle & the age of fracture is between 8 to 12 wks."

The claimant has pointed out his having remained under regular treatment of Dr. B.L. Khandelwal and has produced prescription slips Ex.1 to Ex.4 and the overall evidence on record leaves no manner of doubt that the claimant was bedridden for nearly 8 weeks from the date of accident due to the injuries sustained.

The learned Judge of the Tribunal has obviously omitted to consider the relevant part of the testimony of witnesses and the relevant material on record. Findings on issue Nos. 1 and 2 are reversed and it is held that the accident did occur for the negligence of the non-applicant No.1 causing

bony injuries to the claimant and the non-applicants are held liable for compensation.

The Tribunal has quantified loss for the claimant at Rs.12,500/- with Rs.2,500/- on medicines, Rs.5,000/- towards loss of income and Rs.5,000/- for physical and mental pain and agony. Even in relation to the quantum of compensation claimed by the claimant, the non-applicants have chosen to take pleadings to the effect that the expenditure has been stated exaggerated; and that the claimant was so weak in financial condition that he was not even capable of incurring such expenditure. According to the non-applicants,-

> "प्रार्थी ने खर्चा बढ़ा चढ़ाकर लिखा है इस पेरा के उपधारा क से द तक का खर्चा बिलकुल झूठा और फर्जी है, प्रार्थी की मालीहालत इतनी कमजोर है कि न तो वो इतना खर्चा करने में सक्षम था और न ही उसका इतना कोई खर्चा हुआ । और न ही प्रार्थी को इतना खर्चा करने की कोई आवश्यकता थी।"

The averments as taken in the reply submitted on behalf of the non-applicant Nos. 1 and 2 could only be said to be adding insult to the injuries. It sounds rather indiscreet for an averment in opposition of a claim application of an injured that because of his weak financial condition the injured would not be spending even on his requisite treatment. The claimant has merely produced three bills of medicines of course drawn in the name of his brother-in-law Om Prakash Parihar who

was attending on him. The claimant has not attempted to claim exaggerated amount on his treatment and ancillary expenditure and made a total claim in the sum of Rs.1,46,900/- inclusive of Rs.1,25,000/- towards pains and sufferings and loss of amenities of life. Even if such part of non-pecuniary loss is not countenanced as claimed, it is apparent that the other component of pecuniary loss stated by the claimant remains more or less within reasonable limits.

Apart from the amount assessed by the Tribunal in the sum of Rs.2,500/- towards treatment expenditure, Rs.5,000/- towards loss of income and Rs.5,000/- towards non-pecuniary loss, this Court is of opinion that another sum of Rs.1,000/- deserves to be allowed towards attendants and yet another Rs.1,500/- towards special diets and the claimant is entitled for compensation in the sum of Rs.15,000/-. The claim application was made in the year 1989 and in the overall facts and circumstances of the case and in view of the quantum of compensation being allowed, it appears appropriate in this case to allow interest on the award amount @ 9% per annum from the date of filing of the claim application.

As noticed and partly reproduced hereinbefore, in this case the non-applicants, driver and owner of the offending vehicle, took vexatious averments in their reply to the claim

application even branding the claimant foolish and then of cooking up false case and then of being in weak financial condition incapable of spending on his treatment. In this view of the matter, this court is of opinion that though the insurer shall remain liable to satisfy the award of compensation; costs of litigation ought to be fastened only on the non-applicants Nos. 1 & 2.

Accordingly, this appeal succeeds and is allowed; the impugned award dated 27.02.1993 is set aside; the claim application submitted by the claimant-appellant is partly allowed and the claimant is awarded compensation in the sum of Rs.15,000/- with interest @ 9% per annum from the date of filing of the claim application.

The amount so payable shall be deposited within 30 days from today by the respondent No.3, insurer with the Tribunal. 50% of the award amount shall be paid cash to the claimant-appellant and the remaining be deposited in a Monthly Income Scheme of Post Office for a minimum period of six years with the claimant being entitled to receive periodically interest thereupon. The claimant shall also be entitled to costs of litigation quantified at Rs.3,300/- that shall be paid by the respondent Nos. 1 and 2 only.

//Mohan// **(DINESH MAHESHWARI), J.**